

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
13th Floor , Centre No. 1, World Trade Center Cuffe Parade, Mumbai – 400 005.**

Case No. 11 of 2001

**In the matter of the Amendment Agreement dated 4th February 2000
Entered into between the Maharashtra State Electricity Board and
Reliance Patalganga Power Limited to amend the Power Purchase
Agreement dated 3rd August 1996.**

**Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member**

Dated: 1st November, 2002

ORDER

M/s Reliance Patalganga Power Limited has submitted an application [*through their Advocate A.S. Dayal & Associates*] vide its letter No. RPPL/660/2001 dated 13th July 2001, u/s 22(1) of the ERC Act 1998 and Regulation 73 of the MERC (Conduct of Business) Regulations 1999 with the following prayers:

- (a) To approve the Amendments dated 4th February 2000 to the PPA dated 3.8.1996.
- (b) Such other and further reliefs as the nature and circumstances of the case may require.

2. The Applicant was informed about the rejection of its said application along with the reasons under cover of letter No. MERC/Legal/11/2001/907 dated July 18, 2001, stating that:

Affidavit does not comply with Regulation 73 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations 1999 as the same applies where the generating company desires to sell power to a party other than the MSEB, which is a generating utility. Neither, the Petition can be considered under Section 22(1)(c) of the Electricity Regulatory Commissions Act, 1998.

Under Section 22(1)(c), the MSEB should, if it so desires, approach the Commission before entering into or amending or approving any power purchase arrangement with a generating company or a generating station and it should adhere to the procurement

process approved / to be approved by the MERC, including the price at which the power shall be procured, as envisaged in Section 22(1)(c) of the ERC Act, 1998.

3. Being aggrieved by the Commission's letter dated 18.7.2001, the Applicant filed a Writ Petition No. 100 of 2002 before the Honourable Bombay High Court, which was heard on 14th August 2002 and disposed of vide its order dated 14th August 2002. In pursuance to the High Court directives, the original petition dated 13th July 2001, filed by the Applicant under Section 22(1) of the ERC Act, 1998 is restored to the file of this Commission.

4. The admissibility hearing of the application dated 13th July 2001 filed before the Commission under Section 22(1)(c) of the ERC Act, 1998 and Regulation 73 of the MERC (Conduct of Business) Regulations, 1999, was held on 17th October 2002, in the presence of the consumer representatives recognized under Section 26 of the ERC Act, 1998.

5. During the admissibility hearing, the Commission directed the applicant to clarify whether the application is admissible or not and locus standi of the applicant under Section 22(1)(c) and Regulation 73 of the MERC (Conduct of Business) Regulations, where the 'Purchaser/Buyer of Power' is stipulated to be the Applicant and the 'Seller' the Respondent.

6. In reply, the senior counsel of the Applicant submitted that earlier the Commission had rejected the application dated 13.7.2002 vide its letter dated 18th July 2001 stating that u/s 22(1)(c) of the ERC Act, 1998, the MSEB should approach the Commission. He submitted that Section 22(1)(c) does not specifically say that the 'Purchaser' alone can approach the Commission. It states "*to regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generation stations or from other sources for transmission, sale, distribution and supply in the State*". Thus it considers the process as a whole, which ipso facto, implies sale process also.

7. He further referred to the Regulation 73 of the MERC (Conduct of Business) Regulations 1999 and emphasized that "*any generating company proposing to enter into any agreement for supply of electricity between the generating company and any buying party shall get the approval of the Commission for the tariff before entering into such contracts*". With regard to the query as to "who could make an application", the counsel submitted that the Regulation 73 should be read

with Regulation 24, which makes it amply clear that `any affected or interested person` can make an application before the Commission.

8. The counsel further clarified that the Regulation 73 does not specifically define the term `buying party`, and the same is used in a generic manner. Therefore, the Buying party may or may not include the MSEB.

9. In response to the queries raised above, the counsel of the applicant submitted that according to him, under the various regulations as mentioned above, and relevant sections of the ERC Act, 1998, the applicant can approach the Commission, particularly when the Applicant and the Respondent have already entered into an agreement [dated 3rd Aug. 1996] for power purchase (PPA) to develop and operate a 410 MW base load combined cycle gas turbine power station at Patalganga, District Raigad in Maharashtra. The installed capacity was increased to 447 MW from 410 MW (page No.8 of the petition) in order to fulfill various conditions of the CEA in relation to the Techno-Economic Clearance (TEC). The Petitioner and the Respondent (MSEB) mutually entered into an Amendment Agreement dated 4.2.2000.

10 He further submitted that the Section 22(1)(c) should be read together as "to regulate power purchase and procurement process" and cannot be separated into `power purchase` and `procurement` process and, therefore, the Commission has the jurisdiction to admit the petition for hearing.

11. To a query from the Commission, as regards status of the applicant as "Transmission Utility" and holding of transmission licence, if any, it was stated that they are a generating company as they have existing agreement.

12. The Counsel of the Respondent (MSEB) submitted that in light of the submissions made by the Applicant, the Board has nothing to say at the moment and it reserves the right to make a detailed submission in case the petition is admitted for a hearing subsequently. He further requested the Commission to grant six weeks time for filing a detailed reply in case the present application is considered favourably.

13. Shri Dixit of Prayas submitted that the Honourable High Court in its Order dated 19.9.2002 on the Writ Petition No. 100 of 02, has neither commented nor questioned the reasons given by MERC for rejecting the admission of the RPPL and has only directed the MERC to hear the petitioner before deciding the admissibility of the RPPL petition. Therefore, the Commission is free to decide the admissibility of the present petition in any manner that it deems fit, after hearing the petitioner.

14. Shri Dixit of Prayas, Pune submitted that under Section 22(1)(c), it is the purchasing utility, which should apply before the Commission for a tariff determination. The Section empowers the Commission to 'regulate power purchase and procurement process' and not 'sale' of electricity by a generating company. He invited Commission's attention to its earlier decision in similar cases like (i) MERC Order dated May 17, 2001 in Case No. 16 & 17 of 2000, (ii) Bagasse based co-generation, and (iii) Wind energy where, the Commission adopted a consistent stand that the 'purchaser' will be the applicant and 'seller' will be the respondent, and, therefore, the same principle should be adopted in the present petition also and accordingly reject the application of RPPL at the admission stage itself in line with the MERC's well settled position on this issue. He further submitted that if the Commission desires to change its established principles, then the reasons and concepts behind such a shift need to be explained.

15. The Commission queried in case the purchaser does not come forward with appropriate application, what will happen to the huge investment already incurred by the Applicant. Shri Dixit clarified that in this particular case, there exists an agreement between the Applicant and the Respondent and the agreement provides for a remedy to both the parties. He further submitted that he was not against any person, and only wanted to emphasize that the Applicant should comply with the relevant provisions and regulations.

16. Shri Goenka, President, Vidarbha Industries Association (VIA) submitted that the Act empowers the Commission to 'regulate power purchase and procurement process' and it does not mean that only the purchaser should approach the Commission. The Commission should take into account the power requirement of the State as a whole and regulate the power purchase procurement process accordingly. The consumers are affected due to the rampant power shortages, power cuts, and poor quality of supply. Therefore, in order to avoid any monopoly in the energy sector, if anybody wants to generate and sell power, he should be encouraged with appropriate rates and other conditions.

17. The Applicant has approached the Commission only for the approval of the amended agreement already in existence. It has not approached the Commission without identifying the purchaser. He then referred to Regulation 20 of the MERC (Conduct of Business) Regulations, 1999 and requested the Commission to discharge its duties cast upon it under the ERC Act 1998.

18. Shri Pratap Hogade, objector, submitted that he was a party to the earlier application filed before the Commission in Case Nos. 16 & 17 of 2000 and therefore, a copy of the notice was sent to him. He submitted that he agreed with the views expressed by Prayas, Pune.

19. Shri Pradyumna Kaul, Objector, submitted that the entire theme of the Act is to protect the consumer's interest against the producer because of the very nature of the industry where the tariff is likely to keep on increasing, which ultimately affects the consumers. Further, the distribution agency, which does have an interface with the consumers, must alone be entitled to approach the Commission. Keeping this view and the provisions of the ERC Act, 1998, in mind, the Commission has framed its regulations. Therefore, he agrees with the views expressed by Prayas and further submits that the purchaser should be the applicant and the seller a Respondent.

20. On hearing both the Applicant and the Respondent, and also the consumer representatives as well as objectors, and after perusal of the documents submitted by the Applicant, the Commission decides:

- i) To admit the Petition under Section 22(2)(e) of the Electricity Regulatory Commissions Act, 1998, for further hearing, as there exists an agreement between the applicant and the MSEB.
- ii) To grant six weeks time for the Respondent (MSEB) for filing a detailed reply, and
- iii) To allow the Applicant to produce valid techno-economic clearance certificate from the Central Electricity Authority [referred in para 9 above] within six weeks.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

Sd/-
(Sanjay Kumar)
Secretary, MERC